



## **Express law** *fast track information for clients*

17 May 2013

### **Exposure draft proposal to amend the Constitution released**

The government has released an exposure draft of the Constitution Alteration (Local Government) 2013 that proposes the Constitution be altered to recognise local government by stating that the Commonwealth can grant financial assistance to local government. If Parliament passes it, electors will be asked to agree to the proposed amendment at a referendum to be conducted at the federal election.

#### ***Constitution Alteration (Local Government) 2013***

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On 16 May 2013, the Attorney-General and the Minister for Local Government released an exposure draft of the [Constitution Alteration \(Local Government\) 2013](#) (the proposal). The proposal is to alter the Constitution to recognise local government by stating that the Commonwealth can grant financial assistance to local government bodies.

Under section 128 of the Constitution, a proposed law for the alteration of the Constitution must generally be passed by an absolute majority of both Houses of Parliament before it can be submitted to the electors to vote on in a referendum.

If the proposal is passed by an absolute majority of both Houses of Parliament, a referendum to vote on the proposal will be held on the same day as the federal election.

The proposal implements the recommendation of the 2012 Joint Select Committee on Constitutional Recognition of Local Government, which followed the report of the 2011 Expert Panel on Constitutional Recognition of Local Government chaired by the Hon James Spigelman AC QC, former Chief Justice of the Supreme Court of New South Wales.

#### ***The proposed constitutional amendment***

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Section 3 and Schedule 1 propose an amendment to s 96 of the Constitution which would, with the amendment, read:

##### **96 Financial assistance to States and local government bodies**

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State, or local government body formed by a law of a State, on such terms and conditions as the Parliament thinks fit.

A grant of financial assistance under this section could be made for any purpose. The long title to the proposal refers to grants of financial assistance as including those for 'community and other services'.

The draft [explanatory memorandum](#) accompanying the exposure draft indicates that the amendment was specifically designed to avoid any suggestion that it might permit interference by the Commonwealth with the creation or regulation of local government bodies by States, or enable the Commonwealth to compel local government bodies to accept funding or terms and conditions.

The draft explanatory memorandum also notes that the amendments would not affect the ability of States to alter their systems of local government. It further notes that it is not proposed that any reference to the Territories be included in s 96, since grants of financial assistance to the Territories and bodies formed by Territory laws can already be made under s 122 of the Constitution.

The alteration would not prevent the continuation of grants currently made to States in relation to local government – for example, it would not affect the continued payment of grants by the Commonwealth to States under the *Federal Financial Relations Act 2009* or the *Local Government (Financial Assistance) Act 1995*.

### **Referendum (Machinery Provisions) Amendment Bill 2013**

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Rules about the conduct of a referendum to change the Constitution are set out in the [Referendum \(Machinery Provisions\) Act 1984](#) (the Machinery Act). Parliament has recently passed a Bill to amend this Act.

The [Referendum \(Machinery Provisions\) Amendment Bill 2013](#) has passed both Houses of Parliament. This Bill will implement 2 recommendations of a 2009 report of the then House of Representatives Standing Committee on Legal and Constitutional Affairs, *A Time for Change: Yes/No?*

First, the Bill will amend s 11 of the Machinery Act to substitute a requirement that a Yes/No pamphlet be sent to each address on the Electoral Roll for the current requirement that a Yes/No pamphlet be posted to each elector (to avoid multiple pamphlets being sent to a single address). Second, the Bill will temporarily suspend the operation of subsection 11(4) of the Machinery Act from a commencement day to be specified until the 2013 federal election day, so that the Government may spend money in connection with cases for and against the proposed referendum.

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